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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,302	11/19/2001	Qiang Yu	205355X3404	7405
23460	7590	04/22/2004	EXAMINER	
LEYDIG VOIT & MAYER, LTD TWO PRUDENTIAL PLAZA, SUITE 4900 180 NORTH STETSON AVENUE CHICAGO, IL 60601-6780			SHOSHO, CALLIE E	
			ART UNIT	PAPER NUMBER
			1714	

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/992,302

Applicant(s)

YU ET AL.

Examiner

Callie E. Shosho

Art Unit

1714

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: 21-22Claim(s) rejected: 14-19,23-27,31 and 32

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

Callie E. Shosho  
Primary Examiner  
Art Unit: 1714

**Attachment to Advisory Action**

1. Applicants' amendment and arguments filed 4/7/04 have been fully considered but they are not persuasive.

Applicants argue that Veerasuneni et al. (U.S. 6,409,824) is no longer applicable against the present claims in light of the amendment to present claim 14 which now requires applying to set-gypsum containing material at least one member from each of the following types of inorganic salts: monobasic phosphate salts, trimetaphosphate salts, and acyclic polyphosphate salts having at least three phosphate units. Applicants argue that there is no disclosure or suggestion in Veerasuneni et al. of combination of all three different types of phosphate materials as now required in the present claims.

However, given that Veerasuneni et al. disclose the use of "mixtures" of organic phosphate compounds and given that Veerasuneni et al. explicitly disclose that the organic phosphate compounds utilized in these mixtures include (i) trimetaphosphate salts, i.e. sodium trimetaphosphate, lithium trimetaphosphate, and potassium trimetaphosphate, (ii) sodium hexametaphosphate, and (iii) monophosphate compounds, i.e. monosodium phosphate and monopotassium phosphate, which are identical to the inorganic phosphate salts presently claimed, it is the examiner's position that Veerasuneni et al. do disclose using combination of three inorganic phosphate salts as required in the present claims.

Col.18, line 66-col.19, line 2 of Veerasuneni et al. discloses that a mixture of phosphate compounds can be used while col.9, lines 41-64 discloses that the phosphates include

trimetaphosphate salts, sodium hexametaphosphate, and monophosphate salts. The disclosure in Veeramasuneni et al. of "mixtures" of inorganic phosphates clearly encompasses the use of three different types of inorganic phosphates as presently claimed. While the three presently claimed inorganic phosphate salts are selected from amongst a group of inorganic phosphates as disclosed in col.9, lines 41-64, it is noted that Veeramasuneni et al. disclose only six different types of inorganic phosphates, i.e. trimetaphosphate salts, sodium hexametaphosphate, pyrophosphates, tripolyphosphates, polyphosphoric acid, and monophosphate salts and thus, the presently claimed combination of three inorganic salts is not picked from amongst a vast number of compounds. Rather, there is only six different types of inorganic phosphates disclosed by Veeramasuneni et al. which is not a large group from amongst which the presently claimed three inorganic phosphates must be selected.

While it is agreed that the data in Table 1 of the present specification shows that composition utilizing all three types of presently claimed inorganic phosphate salts (example 7) is superior to composition comprising only one or two types of phosphate salts in terms of one hour compressive strength, dry compressive strength, etc., the data is not persuasive against the 35 USC 102 anticipation rejection of record. A rejection based on 35 USC 102(b), can only be overcome by (a) persuasively arguing that the claims are patentably distinguishable from the prior art, (b) amending the claims to patentably distinguish over the prior art, or (c) perfecting priority under 35 USC 119(e) or 120. As can be seen, comparative data is not sufficient to overcome an anticipatory rejection under 102(b).

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In light of the above, it is the examiner's position that Veeramasuneni et al. remains a relevant reference against the present claims.



Callie E. Shosho  
Primary Examiner  
Art Unit 1714

CS  
4/19/04